IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

JUDGMENT

Khumandas Rankawat VS. State of Raj. & Ors.

D.B. CIVIL SPECIAL APPEAL NO.256/2003
against the order passed by learned Single Judge in S.B. Civil Writ Petition No.3948/97 dated 16.4.2002.

Date of judgment : 25th May, 2006

PRESENT

HON'BLE MR. JUSTICE RAJESH BALIA
HON'BLE MR. JUSTICE R.P. VYAS

Mr. A.S. Singhvi)
Mr. K.L. Joshi) for the appellant.
Mr. Om Singh Bhati)

Mr. J.L. Purohit) for the respondents.
Mr. S.L. Jain)
Mr. L.R. Upadhyay, Dy. Government Advocate.

BY THE COURT:-(Per Hon'ble Mr.Rajesh Balia, J.)

This appeal is directed against the order of the learned Single Judge dated 16th April, 2002 dismissing the writ petition filed by the present appellant.

The petiton was filed and proceeded

with as public interst litigation. However, by order dated 18.7.2001, the Division Bench of this Court noticed that the petitoner has challenged the allotment of plot in question to respondents No.5 and 6 which according to him can fatch in open market Rs.15 lacs and he himself would have offered Rs.10 lacs. Considering, the applicant, to be a person interested to secure the land in question, he cannot be permitted to litigate this cause as public interest litigation and, therefore, the petiton was released from category of 'public interest litigation' and was relagated to the general causes to be placed before appropriate Bench. Thus, in pursuance of order dated 18.7.2001, this petiton was heard by learned Single Judge of this Court and finding no merit in the petiton, the same was dismissed by order dated 16.4.2002.

The another circumstance

surrounding this litigation needs to be noticed as Shri A.S. Singhvi learned counsel appearing for the appellant, who himself wanted to be impleaded as party in support of the petition, has contended and raised his arguments and made his submissions again considering it to be only a public interest litigation. No contentions were raised as to how appellant-petitoner Khumandas Rankawat suffered any injury to challenge the allotment of plot No.B-210 to respondent No.5, when the original plot, for which said respondent had made bid, was not available for delivery of possession to the buyer because UIT has settled certain persons on that plot. In the circumstance, when the petiton was not entertained as PIL, this should ordinarily result in end of journey of this petition. The personal interest of Shri A.S. Singhvi who wants to file an appeal agaisnt rejection of his application to be impleaded as party, and he was not

granted leave to appeal against judgment under appeal, has entered the arena as counsel for the appellant to pursue his own cause is writ large as we shall notice later.

The brief facts which led to initiation of this proceeding was that the respondent No.5, Shri Bhanwar Lal Chordia had made a bid for a plot of land situated in Amarsinghpura Scheme, Bikaner admeasuring about 600 sq. Yards 54 x 70 ft. held on 18.12.1970 and he was the highest bidder for plot No.13 situated at Amarsinghpura. The said buyer had paid 25% of the price immediately and deposited the balance amount on 9.4.1971. Thereafter, he asked for delivery of possession of the plot, but ultimately he found that the plot in question is occupied by some other persons and was unable to secure vacant possession from the UIT.

As per the Urban Improvement Trust, after depositing the entire amount, the buyer was given notices on various dates to take possession of the land. They further averred that answering respondent approached the authority for taking possession but the possession could not be given to the answering respondent because some other persons were in possession of the said plot. Ultimately in the year year 1987, the Secretary, U.I.T. asked the Junior Engineer to report about the possession of the plot in question and the report was submitted in the year 1989 that some other persons have been settled by UIT on the plot in question and such possession was regularised.

It was in these circumstances, for resolving this issue, in the year 1992, in the meeting of respondent Trust it was decided that since there was no fault of the buyer, this case may be placed before Review

and Allotment Committee for allotment of another plot. The Review Committee in its resolution dated 27.7.1992 directed to provide alternative plot to the said buyer either in Sadulganj Scheme or Jaynarayan Vyas Nagar which was again re-afirrmed by the meeting of the Committee held on 7.9.1992.

The committee in its meeting held on 7.9.1992 reiterated its resolution that since the bidder deposited the entire amount of the plot which was sanctioned in his favour in auction but on the said plot some persons have been settled by the Trust for which the applicant is not at fault and, therefore, it was recommended that the matter may be referred to the Review and Allotment Committee to allot a plot of the same size to the successful bidder.

Against the decision of Review

Committee dated 7.9.1992, one Onkarmal Saini had raised objection that since the Trust was not in fault in deliverying the possession of the land in question, the allotment of another land in lieu of the land which was purchased by the said bidder, was not justified.

Initially, it was proposed to give an alternative land to the respondent No.5, Shri Bhanwar Lal Chordia in Jaynarayan Vyas Colony or Mukati Sagar Colony. However, vide resolution dated 28th Feb., 1994, the Review and Allotment Committee resolved to allot the plot No.B-124 situated at Sadulganj, Bikaner on the condition that in case of difference in cost of market price, of the two plots, the difference amount will be charged from the allottee and the market price of any land in excess of the original plot be also charged from the allottee.

The amount which was required to be deposited in terms of the aforesaid condition by the allottee was stated to be Rs.1,33,295/-. However, on 11.4.1994 an application was moved by the allottee that the plot No.B-124 was bigger in size than original plot, and he is not in a position to pay additional price for excess land and he may be allotted another plot. On this request, the matter was again considered by the Chairman and after taking into consideration, the plot No.B-210 was proposed to be allotted to the respondent No.5 on the same condition that was approved by the Reviewing and Allotment Committee.

Looking to the size of the plot and situation on the side road as per the information collected from Sub-Registrar, Bikaner, the market price of the plot allotted to the responent-allottee did not come to be in excess of the market price of

the plot No.13 originally sanctioned in favour of the respondent No.5 at Amar Singhpura. Consequently, the respondent No.5 was allotted and given possession of plot No.B-210 in Sadulganj on 1.5.1995.

In the first instance, certain objections were raised before the Sub-Registrar against the registration of the aforesaid plot on behalf of Shri Bhanwar Lal Harsh, Shri Raj Kumar Swami and Shri A.S. Singhvi. The objections were rejected by the DIG (Registration) and Collector (Stamps) vide his order dated 28th Feb., 1999. The objection as to the allotment of plot No.B-210 was raised before the DIG (Registration) and Collector (Stamps) that could not have entertained such objections. However, those objections did betray the interest of Shri Bhanwar Lal Harsh, Raj Kumar Swami and Shri A.S. Singhvi in respect of the land in question. The objection to

the valuation of plot on the basis of market value for the purpose of levy of Stamp Duty and consequent evasion of stamp duty were rejected.

One of the complainants before the learned Sub-Registrar was Bhanwar Lal Harsh. He filed a suit in the Court of Civil Judge, Bikaner alleging himself to be a trainee Advocate and interested in the public welfare, challenging the aforesaid allotment made in favour of the respondent No.5. The suit was filed in public interest by joining Smt. Urmila Dabre as co-plaintiff for restraining the Urban Improvement Trust from transferring the land in question to the allottee and to recover the possession from the said allottee. The allegations were also levelled about the encroachment on the public road to the extent of 390 sq. ft. We are informed that the said suit had also failed.

The present petitioner after raising an objection before the UIT preferred this writ petition as public interest litigation. However, as noticed by us above, on 18.7.2001 this Court noticed that the petitioner, having shown a personal interest in the allotment of plot, cannot be said to be a public interest litigant and the petition, therefore, was directed to be heard before the appropriate Single Bench. The learned Single Judge vide judgment under appeal, found no merit in the contentions raised by the petitioner in the writ petition and the objections to the allotment made to the respondent No.5, dismissed the writ petition.

One of the significant aspects of the matter is that said Shri A.S. Singhvi, who had objected about the valuation of the lease deed and the alleged evasion of the stamp duty and has sought to thwart the

allotment of plot No.B-210 in favour of the respondent No.5, moved an application before the learned Single Judge for being impleaded as party showing himself to be an intending purchaser which was also rejected by the learned Single Judge.

Said A.S. Singhvi also preferred an appeal against the judgment under appeal in this case as well as rejection of his application for being impleaded as party which appeal was rejected by this Court finding that he cannot be permitted to litigate his personal interest in a petition filed by the petitioner which is not a public interest litigation. Said Shri A.S. Singhvi has then appeared in this case as a counsel for the petitioner and has sought to argue this case once again as a public interest litigation. Apparently, the interest of Shri A.S. Singhvi as a litigant in the case beyond doubt is not as a member

of public but a person having personal interest in the matter.

Case of Khumandas was also considered by the Division Bench at the earlier stage and the same was not considered to be a public interest litigation. In the aforesaid circumstances, this litigation cannot be permitted to be proceeded with as a public interest litigation.

The refernece in this connection may be made to very recent decisions of the Supreme Court in Dattaraj Nathuji Thaware Vs. State of Maharashtra and others *(2005) 1 SCC 590* and Kushum Lata Vs. Union of India & Ors. 2006 AIR SCW 3543 wherein the Apex Court has deprecated allowing the personal interest as a public interest litigation and has stated that a person having personal interest in any litigation

cannot maintain PIL.

Even otherwise such person must not be allowed even to participate in such litigation which may otherwise be considered a public interest litigation.

In T.N. Godavarman Thirumulpad Vs. Union of India & Ors 2006 AIR SCW 2082, the Apex Court said in unequivalent terms that:-

> **"In a given exceptional case where bona fides of a public interest litigation are in doubt, the Court may still examine the issue having regard to the serious nature of the public cause and likely public injury by appointing an Amicus Curiae to assist the Court but under no circumstances with the assistance of a doubtful public interest litigant. No trust can be placed by Court on a mala fide applicant in public interest litigation."**

In the circumstances, we are not

noticing detailed arguments raised by Mr. Singhvi to support the petition as a public cause.

The record of the UIT dealing with this case has been placed before us by the UIT.

The facts about the auction having been held for disposal of the plots at Amarsinghpura Colony Scheme in 1970 in which the respondent Bhanwar Lal Chordia was the highest bidder for plot No.13 measuring 5400 sq. ft. and his bid was accepted. The full amount was deposited by 16.4.1971 in response to notice dated 12th Feb., 1971. By letter dated 11.6.1971, the allottee has demanded the vacant possession of the plot in question. We also find on record a letter dated 1.12.1971 pointing out the cases of illegal encroachment on open land and stating that Trust is not serious about delivering the possession of land in question. Thereafter notwithstanding

issuing notices to deliver the possession, the possession in fact was not delivered to the petitioner notwithstanding the request was made by respondent Bhanwar Lal vide his letter dated 25th Feb., 1974. Yet another application dated 1.10.1981 of Bhanwar Lal Chordia is on record requesting the UIT to deliver the possession. These letters and notices are suggestive of the fact that notwithstanding the request made by the respondent allottee time and again in fact possession was not made available to the respondent. The reason which ultimately came out to be in the report of Engineer of the UIT submitted on 7.6.1989 is that the plot in question was in possession of Mangtu Khan, Shri Puse Khan, Shri Ganni Khan and Shri Dinesh Raj. All these persons have been settled at the aforesaid plot by Urban Improvement Trust itself. On 10.11.1989, the Secretary asked for the details about settling the aforesaid persons over the plot No.13 at Amarsinghpura. No response appears to have come on record, nor during the course of

hearing, the learned counsel for the UIT was in position to state about the same.

Be that as it may, this fact has not even been disputed before us that plot No.13 is now in fact in possession of the persons named in the report. Therefore, it becomes very apparent that notwithstanding regular requests by the buyer and notwithstanding notices issued by the UIT, the plot No.13 could not be delivered to the buyer because the same was in possession of some one else and, therefore, the respondent-buyer made a prudent demand that if the said plot is not made available to him, he may be given alternate land of the similar size at any other colony. This request of the respondent-buyer was processed and in the meeting of Review and Allotment Committee recommended, the allot another plot ad-measuring 60 x 90 sq. ft. equal to measurement of plot which was purchased by the buyer in Amarsinghpura. It also appears from the record that in Jay Narayan Vyas Colony or Mukta Prasad Colony one

Onkarmal Saini, a Member of Trust raised a doubt about the aforesaid recommendation vide his letter dated 8.9.1992 and suggested that the resolution may be cancelled. However, this objection of Saini does not appear to have prevailed with the Trust and ultimately by resolution dated 28th Feb., 1994 Review and Allotment Committee decided that the said buyer of plot No.13 at Amarsinghpura Colony be allotted the vacant plot No.B214 situated at Sadulganj on the condition that since plot No.B214 is bigger in size than the original plot situated at Amarsinghpura, for the excess land, market price prevailing on that date may be charged from the allottee and the difference in the market price of the plot No.13 and the plot No.B-214 at Sadulganj be also charged from the allottee. In pursuance of this order, the petitioner was required to deposit Rs.1,32,500/- as additional price for allotment of plot No.B214 vide its notice dated 21st April, 1994. However, the allottee made a request that the plot is bigger one and he is not in a position to pay additional

price, he may be allotted another plot of the same size. This request was considered and the plot No.B-210, which is subject matter of this writ petition, was ordered to be allotted on the same terms and conditions to the respondent vide resolution dated 10.4.1995 in pursuance of which possession was handed over to the respondent on 1.5.1995.

We may notice that additional demand raised for allotment of Plot No.B-214 in Sadulganj Colony was primarily attributable to the additional land comprise in the said plot. In its meeting held on 22nd Feb., 1996, the Commissioner has raised a ground that resolution dated 30.4.1994 was subject to approval by the Chairman but the possession has been delivered to the respondent Bhanwar Lal Chordia before obtaining such approval. However, the Trust Committee unanimously approved the earlier resolution of making allotment of plot No.B-210 to respondent and ordered for an enquiry that how the possession was delivered to the buyer and by whom, before

the approval of the Chairman.

Be that as it may, since the allotment of plot No.B-210 as well as B-214 was subjected to condition that the difference in price between the plot No.13 at Amarsinghpura and plot allotted to the allottee at Sadulganj, if exceeds the price of the plot at Amarsinghpura will be chargeable from the respondent. The matter was referred to the Sub-Registrar, Bikaner for submitting the comparative price of both the areas. According to the said respondent, the market price of plot No.B210, which is stated to be situated in the side lane and which is only 30' wide, was less than market price of plot No.13 at Amarsinghpura on that date.

This position has been disputed by petitioner in his writ petition by offering that he is prepared to buy the aforesaid plot at Rs.10 lacs.

The petitioner has seriously disputed

the report submitted by the Sub-Registrar about the current price of Sadulganj plots. However, the respondent in his preliminary objection responding to offer made by the petitioner considered that he is prepared to purchase the plot in question for Rs.10 lacs and as stated in his writ petition that its current market price is Rs.15 lacs, the auction of the plot No.B-214A and B-214B which took place on 8.3.1995 in the near vicinity at the time when plot No.B-214 at Sadulganj was first offered to the respondent and ultimately when the plot No.B 210 was allotted shows that for plot No.B 214A at Sadulganj the price of the land was Rs.96.5 per sq. ft. and for plot No.B 214B was Rs.79/- per sq. Ft and size of those plots are of smaller than the size of plot No.B214. It was also stated that in the said auction, the petitioner has not participated. The facts about the auction of the aforesaid two plots at the aforesaid price has not been disputed even by the petitioner in his rejoinder. He has merely stated that it was not necessary for him to participate in

each and every auction.

Moreover, in this regard, we have noticed earlier that when lease document was produced for registration, an objection was raised about the valuation of the plot and the stamp duty payable thereon by Shri Bhanwar Lal Harsh, Shri Raj Kumar Swami and Shri A.S. Singhvi and the same also was held against them. Therefore, in our opinion, the contention raised about the price of the plot in question particularly keeping in view the description of the situation of plot No.B214 and B210 detailed by the respondent No.5 in his reply has been acepted to be correct by the petitoner in his rejoinder. Therefore, much credence cannot be given to hue and cry made by the petitioner that plot No.B210 was allotted to the allottee-respondent at a lower price for conferring a monetary advantage due to escalated price of land in Bikaner at the time when the plot was allotted. The price

of plot at Amarsinghpura on which if other persons were not settled as stated by Sub-Registrar, has not been doubted as stated, the price of the land at Sadulganj was much higher. For this purpose, reference has been made to DLC rates. However, in the aforesaid facts and circumstances, we do not find any such merit in contention of the petitioner to enquire further investigation in the detail of the price difference as on the date the allotment was made at the behest of the petitioner. The making of escalated offer by a person who is seeking for plot allotted in favour of a third person without any backing by a positive action of deposit of such amount with the authority and keeping in view the material which has come on record cannot be given much credence. As per his own assertion, he is desirous of getting the plot at about 66% of alleged market price knowing fully well on his own allegation such as offer which according to maker also is much below the market price

alleged by him. This shows that petitioner has only desire to throw spanner in the wheel, without any credible support for market price alleged by him and with no risk of himself subjecting to his own offer.

The reliance is also placed on the resolution of the Trust by which a decision was taken that if the plot sold in auction is not available for delivery of possession, it can be exchanged for another plot if available in the very same scheme but in exchange plot cannot be allotted in another colony but in such circumstance on non-availability of an alternative plot in the same colony the price deposited by the buyer along with the interest be refunded to the buyer. The allotment of another plot at all will not be permissible, is of little assistance to the petitioner inasmuch as the said resolution is of 1997 much later than the date on which the UIT has sanctioned to provide alternate land to the respondent as the land which was sold to him was not available for delivering it to him.

In the aforesaid circumstances, on the material placed before us, it is apparent that the plot No.13 at Amarsinghpura could not be delivered to the respondent notwithstanding the repeated requests made by him for delivering him the possession of the land after deposit of price and ultimately in response to his application made in 1987 it was reported by the Engineer of the UIT that the said plot has been occupied by some other persons, who have been settled by UIT itself. The question of considering the allottee's request to allot him other land in the same scheme of the same measurement and of the like nature could not be said to be an arbitrary and unreasonable exercise for settling the allotment in favour of buyer, the possession of which could not be delivered to him for long period. There being no substance in the contention that plot of much higher price has been allotted to the said buyer without charging any money has also been not sustainable in the present case so as to doubt

the bonafide of the transaction made in good faith for making land available to a buyer, who has paid the full price of the land long back. If there is difference in the market price and if the allotted plot was to fetch higher price the difference were to be charged from the allottee further shows that there was no consideration of conferring undue advantage by making available to the respondent buyer plot of the same size either of the same value or higher value on charging higher price.

Apparently, this litigation appears to be initiated by Shri A.S. Singhvi, whose residential plot is adjacent to the plot NO.B210 and the petitioner appears to be in front to expose his cause also because of some political rivalry, as from the record it appears that said Bhanwar Lal Chordia is a former Member of Municipal Council and former Chairman of the Trade Association.

Moreover, we find that though the possession of the plot was delivered in 1995

and objection was raised by Shri Bhanwar Lal Harsh, Shri Raj Kumar Swami and Shri A.S. Singhvi by making a complaint before the DIG (Registration) and Collector (Stamps), the present petitioner has appeared in scene more than 2 years after the possession was delivered to the respondent No.5 and the transaction was completed.

In the aforesaid circumstances, we are of the opinion that the order of the learned Single Judge rejecting the writ petition filed by the petitioners does not call for any interference and the appeal must fail and the same is accordingly dismissed with costs.

[R.P. VYAS], J. **[RAJESH BALIA], J.**

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